

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|------------------------------|---|----------------------------------|
| _____ |) | |
| J. KENNETH KEARNEY USA LTD., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 04 CV 12643 RCL |
| |) | |
| DAVID SMITH, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

DEFENDANT’S ASSENTED TO MOTION TO EXTEND TIME

Defendant David Smith (“Smith”), by his attorneys Edwards & Angell, LLP, hereby moves this court for a seven (7) day extension of time, through December 31, 2004 to respond to the Complaint in this action. As grounds therefore Smith states as follows:

1. This is an action alleging fraud (Count I), conversion/misappropriation of confidential information (Count II), violation of Mass. Gen. Laws ch. 93, § 42/statutory misappropriation of trade secrets and/or confidential information (Count III), breach of fiduciary obligation (Count IV), and violation of Mass. Gen. Laws ch. 93A (Count V).
2. Smith is a Canadian citizen with a principal residence in Alabama. Plaintiff J. Kenneth Kearney USA Ltd (“JKK”) is alleged to be a New York corporation with a principal place of business in Framingham, Massachusetts (Complaint, ¶ 1). Smith filed a Notice of Removal on December 17, 2004. As a result, his response is due on December 24, 2004 (five (5) days after removal) pursuant to Fed. R. Civ. P. 81(c).

3. The requested additional time (through December 31, 2004) is limited and is needed in order for Smith to investigate the claims in the complaint and to formulate a response; and

4. Plaintiff has assented to this motion.

WHEREFORE, Smith requests that the Court grant this motion.

DAVID SMITH,

By his attorneys,

_____/s/ Windy L. Rosebush_____
Timothy P. Van Dyck
Windy L. Rosebush
Edwards & Angell, LLP
101 Federal Street
Boston, MA 02110
617-439-4444

LOCAL RULE 7.1 CERTIFICATION

On December 22 and 23, 2004, Windy L. Rosebush, counsel for the Defendant conferred with counsel for the Plaintiff, Kristin M. Cataldo, who assented to the Motion to Extend Time.

_____/s/ Windy L. Rosebush_____
Windy L. Rosebush

CERTIFICATE OF SERVICE

I, Windy L. Rosebush, hereby certify that on this 27rd day of December, 2004, I caused a copy of the foregoing document to be served upon Kristin M. Cataldo, Esq. Gadsby Hannah LLP, 225 Franklin Street, 21st Floor, Boston, MA 02110 by first class mail, postage pre-paid.

_____/s/ Windy L. Rosebush_____
Windy L. Rosebush